


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
JUL 03 2007

CLERK

EVELYN A. BLACKMOON; ROBERT
W. COURNOYER; and
ALAN FLYING HAWK,

Plaintiffs,

vs.

CHARLES MIX COUNTY; CARROL
ALLEN; KEITH MUSHITZ; and
SHARON DRAPEAU, in their official
capacities as members of the Charles Mix
County Commission; and CHRIS
PAZOUR, in her official capacity as
Auditor of Charles Mix County,

Defendants.

CIV 05-4017

MEMORANDUM OPINION
AND ORDER

Pending before the Court is Defendants' Motion to Amend Order, Doc. 127. Defendants move the Court to amend its March 30, 2007, Memorandum Opinion and Order, Doc. 121, to grant permission to appeal the Court's denial of Defendants' summary judgment motion. Defendants seek a finding, pursuant to 28 U.S.C. § 1292(b), that the Court's decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation. Plaintiffs resist the motion. The Court denied Defendants' Motion for Summary Judgment and Motion to Dismiss, Doc. 93, in which Defendants argued that Claims Two, Three and Four of Plaintiffs' Complaint should be dismissed as moot. The merits of these remaining claims have not been considered by the Court.


Defendants argue that the Court's denial of their summary judgment motion is in direct conflict with the Honorable Karen E. Schreier's opinion in *Wilcox v. City of Martin*, CIV 02-5021 (D.S.D.), attached to Defendants' reply brief, Doc. 131. In *Wilcox*, however, it appears the Plaintiffs

were claiming only a malapportionment violation, which was corrected by the Defendants before the entry of final judgment in that case. In contrast, the Plaintiffs in the present case claimed both a malapportionment violation and a separate claim for racial discrimination under the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments to the United States Constitution. The Court explained in its March 30, 2007 decision that, contrary to Defendants' arguments, the fact that the voting districts in Charles Mix County have been changed does not automatically mean Plaintiffs cannot be granted relief under 42 U.S.C. § 1973a(a) if they were able to prove their separate claims of racial discrimination under Section 2 of the Voting Rights Act of 1965 or the Fourteenth and Fifteenth Amendments to the United States Constitution. Thus, although the Court ruled Plaintiffs were not entitled to the special remedies available under 42 U.S.C. § 1973a(a) for the malapportionment violation they proved, those remedies may be available if Plaintiffs prevail on their discrimination claims. Accordingly, Plaintiffs' remaining claims are not moot and Defendants' motion will be denied.

IT IS ORDERED that Defendants' Motion to Amend Order, Doc. 127, is denied.

Dated this 3rd day of July, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY